

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HOWARD KENNETH SHAPIRO,
Plaintiff,

v.

SECANT PHARMA, LLC,
Defendant

: CIVIL ACTION

:

:

:

:

NO. 09-3754

FILED

AUG 26 2009

MICHAEL E. KONZ, Clerk
By _____ Dep. Clerk

ORDER

AND NOW, this 26th day of August, 2009, upon consideration of Plaintiff's Motion and Statement In Support of Request to Proceed *in Forma Pauperis* (Doc. No. 1) and Plaintiff's Complaint, it is hereby **ORDERED** that:

1. It appearing that Howard Kenneth Shapiro is unable to pre-pay the filing fees and costs, Plaintiff's Motion is **GRANTED**, and Plaintiff has permission to proceed *in Forma Pauperis*;
2. The Complaint is **DISMISSED** pursuant to Federal Rule of Civil Procedure 12(h)(3) without prejudice to Plaintiff's right to institute suit in a Court with subject-matter jurisdiction;¹ and

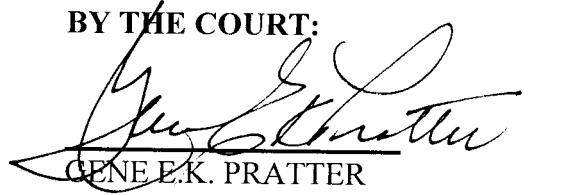
¹ Plaintiff Howard Kenneth Shapiro's Complaint alleges that the Defendant-Corporation and two of its officers breached a contract with him regarding various patents. It does not appear that the validity of the patents is at issue, rather that the Defendant and its officers failed to pay the Plaintiff royalties due to him under contract. Thus, in order for this Court to exercise jurisdiction over the Complaint, complete diversity must exist. See 28 U.S.C. § 1332(a)(1). Mr. Shapiro is a Pennsylvania citizen, as is Defendant Secant Pharma LLC. Plaintiff's contention that diversity jurisdiction exists because one of Secant's officers is a New Jersey resident is simply incorrect.

The Plaintiff also includes in his Complaint a number of alleged federal criminal law violations (e.g., criminal RICO violations). Although he asserts that the same acts that would violate those federal criminal statutes serve as the basis of his breach of contract complaint, the fact remains that Mr. Shapiro's only claim here for which he seeks damages is a breach of contract claim, which is a state law claim.

For these reasons, the Court must dismiss the Complaint without prejudice for lack of subject matter jurisdiction.

3. The Clerk of Court shall mark this case **CLOSED** for all purposes, including statistics.

BY THE COURT:



GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE